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# SUPER LAW GROUP, LLC

March 1, 2018

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OFFICE OF THE  
EXECUTIVE SECRETARIAT

**Via Certified Mail, Return Receipt Requested**

Queens Ready Mix Inc.  
149-01 95<sup>th</sup> Ave  
Jamaica, New York 11435

Gerardo Mastronardi  
149-01 95<sup>th</sup> Ave  
Jamaica, New York 11435

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

I write on behalf of Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper)<sup>1</sup> ("Baykeeper") to notify you of Baykeeper's intent to file suit against Queens Ready Mix Inc., and Gerardo Mastronardi (collectively "Queens Ready Mix") pursuant to Section 505(a) of the federal Clean Water Act ("CWA").<sup>2</sup>

Baykeeper intends to file suit, as an organization and on behalf of adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.<sup>3</sup>

Baykeeper intends to take legal action because Queens Ready Mix is discharging polluted stormwater from its ready mix concrete plant ("the Facility"), located at 149-01 95<sup>th</sup> Ave in Jamaica, New York to the municipal separate storm sewer system the waters of the United States without a permit. This is a violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.<sup>4</sup> Further, Queens Ready Mix has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity

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<sup>1</sup> Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper), is a non-profit public interest 501(c)(3) corporation, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary through enforcement, field work and community action. Baykeeper has approximately 350 members in the New York and New Jersey region, many of whom use and enjoy New York Harbor and Jamaica Bay, which are polluted by industrial stormwater runoff discharged by facilities in New York City and Nassau County that are or should be covered by the General Permit.

<sup>2</sup> 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

<sup>3</sup> See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

<sup>4</sup> 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

("General Permit")<sup>5</sup> issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Sections 402(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

The street address of the Facility is provided in government records and online resources as 149-01 95<sup>th</sup> Ave. Jamaica, New York. For clarity, the Facility location can be uniquely identified by Queens County's block 10000, Lot 31. The water of the United States that are polluted by Queens Ready Mix's Facility is Jamaica Bay.

## I.

### **BACKGROUND**

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater<sup>6</sup> pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as "impaired," or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.<sup>7</sup> For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges from the Facility introduce a host of industrial pollutants into Jamaica Bay. The Clean Water Act provides a regulatory regime for mitigating the worst impacts of industrial stormwater pollution, but the Queens Ready Mix site is not in compliance with the basic requirements of that regime.

## II.

### **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS**

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<sup>5</sup> New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-17-004, (hereinafter "General Permit"), available at <http://www.dec.ny.gov/chemical/9009.html>. This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. The current General Permit became effective on March 1, 2018 and will expire on February 28, 2023.

<sup>6</sup> Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

<sup>7</sup> See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, [http://ofmpub.epa.gov/waters10/attains\\_state.report\\_control?p\\_state=NY&p\\_cycle=2012&p\\_report\\_type=A](http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A) (last visited Oct. 14, 2014).



**A. Queens Ready Mix is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.**

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>8</sup> Queens Ready Mix's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA<sup>9</sup> and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.<sup>10</sup> The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, (a) by receiving, storing, processing, cutting and transporting concrete, sand, aggregate, stone, Portland cement and other materials outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater discharges.

Queens Ready Mix's activities at the Facility include but are not limited to the purchase, collection, processing, cutting, and outdoor storage, of sand, aggregate, stone, Portland cement, and other substances used in manufacturing, loading, and delivering ready mix concrete. Upon information and belief, the Facility houses a ready mix concrete plant, truck washing equipment, and materials piles that are all potential sources of industrial pollutants. Queens Ready Mix mixes raw materials into concrete on site, transfer the concrete to trucks, wash out trucks at the Facility, and store a variety of finished concrete products, other building materials, and open containers on site, exposed to stormwater.

In carrying out these activities at the Facility, Queens Ready Mix stores and handles materials in a manner that exposes them to precipitation and snowmelt. In particular, raw materials piles, machinery, and trucks that have completed their deliveries can release pollutants onto the Facility property including aggregate, sand, Portland cement, cement additives, waste materials reused in concrete manufacture and other minerals such as shale, clay, limestone, slate, slag, pumice, fly ash, baghouse settled dust, oil and grease. If specialty concretes or cast/formed products are demanded by a customer, the Facility may also house form release agents, latex sealants, and bitumastic coatings. All of these wastes can release solids that suspend or dissolve in stormwater, lead, iron, zinc, oil and grease, oxygen-demanding and pH-altering pollutants into Jamaica Bay via Head of Bay.<sup>11</sup>

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<sup>8</sup> See CWA §§ 301(a), 402.

<sup>9</sup> 33 U.S.C. § 1362(12).

<sup>10</sup> EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(1)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

<sup>11</sup> See EPA, "Industrial Stormwater Fact Sheet Series, Sector E: Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities," available at [https://www.epa.gov/sites/production/files/2015-10/documents/sector\\_e\\_glass.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/sector_e_glass.pdf) (last visited February 15, 2018).

In addition, machinery on the site may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residue. These toxic pollutants can be generated in forms ranging from spilled liquid to small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

Because Queens Ready Mix fails to adequately shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates.

Polluted stormwater discharges flow from the Facility to nearby municipal separate storm sewer system ("MS4") drains which discharge directly into Jamaica Bay, a "water of the United States," as defined in 40 C.F.R. § 122.2 and, therefore, a "navigable water" as defined in Section 502(7) of the CWA. Queens Ready Mix does not have a NPDES permit for these discharges of pollutants. Thus, Queens Ready Mix is discharging polluted industrial stormwater without the permit required under Sections 301 and 402 of the CWA.

**B. Queens Ready Mix Is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.**

Queens Ready Mix is engaged in the business of providing ready mix concrete and, therefore, is an industrial discharger with a primary Standard Industrial Classification ("SIC") Code of 3273. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, Queens Ready Mix must apply for coverage under the General Permit or an individual NPDES permit for Queens Ready Mix's discharge of polluted stormwater. In addition, Queens Ready Mix must apply for an individual NPDES permit if the Facility is discharging process wastewater or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit (for example, truck washwater is a non-stormwater discharge that is not eligible for coverage under the General Permit). By failing to apply for coverage under the General Permit or an individual permit, Queens Ready Mix is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).<sup>12</sup>

To be eligible to discharge under the General Permit, must submit to DEC a registration form called a "Notice of Intent."<sup>13</sup> Notice of Intent forms are available online from DEC. Queens

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<sup>12</sup> Sections 301(a) and 402(a) and (p) make it unlawful for Queens Ready Mix to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require Queens Ready Mix to apply for a NPDES permit that covers its discharge of stormwater associated with industrial activity.

<sup>13</sup> See General Permit, Part I.D.2. In notifying Queens Ready Mix that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Baykeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain



Ready Mix has failed to prepare and file a Notice of Intent or an application for an individual permit.<sup>14</sup>

**C. Queens Ready Mix Is Violating the Clean Water Act by Failing to Comply with the General Permit.**

As a discharger of stormwater associated with industrial activity, Queens Ready Mix must comply at all times with the requirements of the General Permit (or an individual permit).<sup>15</sup> By discharging stormwater associated with industrial activity without complying with the General Permit, Queens Ready Mix is violating CWA Sections 301(a) and 402(a) and (p).<sup>16</sup> The main General Permit requirements that Queens Ready Mix has failed and continue to fail to meet are explained further below.

**1. Queens Ready Mix has failed to develop and implement a Stormwater Pollution Prevention Plan.**

Before submitting a registration form, Queens Ready Mix must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.<sup>17</sup> The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.<sup>18</sup>

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.<sup>19</sup>

Queens Ready Mix has failed to develop and implement a legally compliant SWPPP, as required by Part III of the General Permit.<sup>20</sup>

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and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

<sup>14</sup> A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

<sup>15</sup> This section discusses the compliance requirements of the General Permit. If Queens Ready Mix elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus Queens Ready Mix will still be required to comply with all of the following.

<sup>16</sup> Sections 301(a) and 402(a) and (p) make it unlawful for Queens Ready Mix to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

<sup>17</sup> See General Permit Part III.C.

<sup>18</sup> See General Permit Part III.A.

<sup>19</sup> See *Id.*

<sup>20</sup> On information and belief, no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

**2. Queens Ready Mix has failed to implement control measures and Best Management Practices that are selected to meet best available technology standards.**

Queens Ready Mix cannot legally discharge stormwater under the General Permit until it implements mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.<sup>21</sup> The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that “[t]he owner or operator must select, design, install, and implement control measures [including best management practices]” in accordance with good engineering practices, to meet the effluent limits contained in the permit.<sup>22</sup> The General Permit’s effluent limits include both numeric limits specific to certain sectors,<sup>23</sup> as well as non-numeric technology-based effluent limits that apply to all facilities.<sup>24</sup> These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater<sup>25</sup> and minimizing the discharge of pollutants in stormwater<sup>26</sup> “to the extent achievable using control measures [including best management practices] that are technologically available and economically practicable and achievable in light of best industry practice.”<sup>27</sup>

Queens Ready Mix has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by the General Permit.

**3. Queens Ready Mix has failed to conduct routine site inspections and comply with monitoring, recordkeeping, and reporting requirements.**

Queens Ready Mix must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.<sup>28</sup> The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.<sup>29</sup>

In addition, qualified facility personnel must carry out routine inspections at least quarterly.<sup>30</sup> During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and

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<sup>21</sup> See General Permit Part II.A.D; *see also* Part VII (setting forth sector-specific control measures and practices).

<sup>22</sup> General Permit Part II.

<sup>23</sup> See General Permit, Part VIII.

<sup>24</sup> See General Permit, Part II.

<sup>25</sup> See *Id.*

<sup>26</sup> See *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> See General Permit, Part IV.A.1.

<sup>29</sup> See *Id.*

<sup>30</sup> See General Permit, Part IV.B.

document any deficiencies in the implementation and/or adequacy of the SWPPP.<sup>31</sup> Such deficiencies must then be addressed through corrective actions.

The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.<sup>32</sup> In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually.<sup>33</sup>
- conduct visual monitoring of stormwater discharges at least quarterly.<sup>34</sup>
- perform an annual dry weather inspection to detect non-stormwater discharges.<sup>35</sup>
- inspect, sample and monitor discharges from coal pile runoff;<sup>36</sup>
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;<sup>37</sup>
- document storm events during which any samples are taken;<sup>38</sup>
- keep records of the monitoring with the Facility's SWPPP;<sup>39</sup> and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.<sup>40</sup>

Because Queens Ready Mix is engaged in industrial activities associated with ready mix concrete production, it is required to sample for:<sup>41</sup>

- Total suspended solids
- pH
- Total Recoverable Iron

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<sup>31</sup> See *Id.*

<sup>32</sup> See General Permit, Part IV.F.1, 2.

<sup>33</sup> See General Permit, Part IV.B.1.c.

<sup>34</sup> See General Permit, Part IV.B.1.a.

<sup>35</sup> See General Permit, Part IV.C.

<sup>36</sup> See General Permit, Part IV.F.1.

<sup>37</sup> See General Permit, Part IV.D.4.

<sup>38</sup> See General Permit, Part IV.D.3.

<sup>39</sup> See General Permit, Part IV.F.3.

<sup>40</sup> See General Permit, Part VI.

<sup>41</sup> See General Permit, Part VII. Sector E.



Baykeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.<sup>42</sup> This notice provides Queens Ready Mix with sufficient information to identify the applicable standards and limitations.

Queens Ready Mix has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by Parts III, IV, and VIII of the General Permit. Queens Ready Mix also has failed to retain records and submit monitoring reports to DEC, as required by Parts IV and VIII of the General Permit.

**4. Queens Ready Mix has failed to comply with additional requirements located in Part VII of the General Permit.**

As noted above, the General Permit contains various requirements specific to ready mix concrete and stone cutting facilities. These requirements, some of which are referenced above, are collected in Part VII of the General Permit. They include:<sup>43</sup>

- A requirement to include in your SWPPP and annual reports to DEC a description of measures that ensure that process wastewater that results from washing of trucks, mixers, transport buckets, forms or other equipment are discharged in accordance with a separate SPDES permit or are recycled.
- A requirement to identify in your SWPPP the locations of the following, if applicable:
  - Bag house or other dust control device;
  - Recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device.
- A requirement that your site inspections shall take place while the Facility is in operation and shall include all of the following areas that are exposed to stormwater:
  - Material handling areas
  - Aboveground storage tanks
  - Hoppers or silos,
  - Dust collection/containment systems
  - Truck wash down/equipment cleaning areas
- A requirement to sweep the Facility weekly to prevent or minimize the discharge of cement and aggregate.
- A requirement to, if practicable, store cement and any other fine granular solids in enclosed silos or hoppers, buildings, or under other covering.

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<sup>42</sup> See General Permit, Part VII.

<sup>43</sup> See General Permit, Part VII, Sector E.



Queens Ready Mix has failed to comply with the additional requirements of Part VIII of the General Permit.

In sum, Queens Ready Mix's discharge of stormwater associated with industrial activities without a permit, its failure to apply for permit coverage, and its failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

### III.

#### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

The entities referred to collectively in this letter as Queens Ready Mix are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. On information and belief, Queens Ready Mix has operated the Facility for at least five years, and currently advertises, by means of a sign on the premises as the operator of the Facility. Queens Ready Mix has operational control over the day-to-day industrial activities at this Facility. Therefore, Queens Ready Mix is responsible for managing stormwater at the Facility in compliance with the CWA. Baykeeper hereby puts Queens Ready Mix on notice that if Baykeeper subsequently identifies additional persons as also being responsible for the violations set forth above, Baykeeper intends to include those persons in this action.

### IV.

#### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 149-01 95<sup>th</sup> Ave, Jamaica, NY 11435, Block 10000, Lot 31 in Queens County. The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.<sup>44</sup>

### V.

#### **DATES OF VIOLATION**

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<sup>44</sup> The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. See, e.g., *Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), aff'd 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *Assateague Coastkeeper v. Alan & Kristin Hudson Farm*, 727 F. Supp. 2d 433, 439 (D. Md. 2010); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at \*4 (N.D. Cal. Sept. 27, 1995)

The requirement to obtain permit coverage for the discharge of stormwater associated with industrial activity came into effect at least five years ago. Therefore, every day upon which Queens Ready Mix has failed to apply for permit coverage for the past five years is a separate violation of Sections 301(a), 402(p)(3)(A) and (p)(4)(A) of the CWA and EPA's regulations implementing the CWA.

Additionally, Queens Ready Mix has discharged pollution without a permit in violation of Section 301(a) of the CWA on every day in the last five years on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if Queens Ready Mix seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which Queens Ready Mix claims coverage under a NPDES permit but fail to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

Queens Ready Mix is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available to Baykeeper after the date of this Notice of Intent to File Suit.<sup>45</sup> These violations are ongoing, and, barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

## VI.

### RELIEF REQUESTED

Baykeeper will ask the court to order Queens Ready Mix to comply with the Clean Water Act, to pay penalties, and to pay Baykeeper's costs and legal fees.

First, Baykeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Baykeeper will seek an order from the Court requiring Queens Ready Mix to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

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<sup>45</sup> See *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.").



Second, pursuant to Section 309(d) of the CWA,<sup>46</sup> each separate violation of the CWA subjects Queens Ready Mix to a penalty not to exceed \$37,500 per day for each violation that occurred prior to November 2, 2015, and up to \$52,414 per day for each violation that occurred after November 2, 2015.<sup>47</sup> Baykeeper will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Baykeeper will seek recovery of its litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

## VII.

### PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper).  
30 Washington St.  
Matawan, NJ 07747  
(732) 888-9870  
Attn.: Greg Remaud, Acting Executive Director and Baykeeper

## VIII.

### IDENTIFICATION OF COUNSEL

Baykeeper is represented by legal counsel in this matter. The name, address, and telephone number of Baykeeper's attorneys are:

Michael DiGiulio, Esq.  
Edan Rotenberg, Esq.  
Super Law Group, LLC  
180 Maiden Lane, Suite 603  
New York, New York 10038  
(212) 242-2355

## IX.

### CONCLUSION

The foregoing provides more than sufficient information to permit Queens Ready Mix to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to

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<sup>46</sup> 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

<sup>47</sup> 40 C.F.R. §§ 19.2 and .4.

constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.<sup>48</sup>

If Queens Ready Mix has developed a SWPPP, Baykeeper requests that Queens Ready Mix send a copy to the undersigned attorney.<sup>49</sup> Otherwise, Baykeeper encourages Queens Ready Mix to begin developing a SWPPP immediately after receiving this letter and ask that Queens Ready Mix please inform the undersigned attorney of its efforts so that Baykeeper can work with Queens Ready Mix to avoid disputes over the contents of the SWPPP.<sup>50</sup>

During the sixty-day notice period, Baykeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If Queens Ready Mix wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Sincerely,



Michael DiGiulio, Esq.  
Super Law Group, LLC  
180 Maiden Lane, Suite 603  
New York, New York 10038  
(212) 242-2355 ext. 4

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<sup>48</sup> 40 C.F.R. § 135.3(a).

<sup>49</sup> Note that under Part III.C.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

<sup>50</sup> Baykeeper will not send a new notice letter in response to any effort Queens Ready Mix makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). *See also* *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).



Notice of Violation and Intent to File Suit  
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cc:

Scott Pruitt, Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Peter D. Lopez, EPA Region 2 Administrator  
Environmental Protection Agency  
290 Broadway  
New York, NY 10007-1866

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